IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 28349 of 2007(Y)

PETITIONER:

PREETHI, W/O SHAJI,
SREE VAISAK, POIKKATTU HOUSE,
CHALAKKUDY, THRISSUR DISTRICT.

BY ADV. SRI.G.HARIHARAN

RESPONDENT:

THE SECRETARY,
CHALAKKUDY MUNICIPALITY,
CHALAKKUDY, THRISSUR DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28349 OF 2007

Dated this the 16th day of October, 2007

JUDGMENT

The grievance of the petitioner who filed an application to the 1st respondent Municipality for permit for construction of a residential building is that the application was rejected by the Municipality on the ground that the land of the petitioner is reserved for public purpose. The Municipality has filed a counter affidavit wherein it is contended that the petitioner will have to approach Government, seeking zonal exemption. The stand of the Municipality seems to be founded on the judgment of this Court in **Syeesh Kumar v. State of Kerala** [2005(4) KLT 1027].

2. Mr.M.P.Ashok Kumar, Standing Counsel for the Municipality submits that the Municipality is not competent to grant zonal exemption. However, the submission of Mr.G.Hariharan, counsel for the petitioner that the plot on which the residential building is proposed to be constructed is the only plot belonging to the petitioner and that notwithstanding the zonal regulations, several residential buildings have come up in the locality, has appeal. Equally appealing is the submission that the scheme which has been notified years ago and has not been implemented yet, has become oppressive.

Referring to the judgment of the Supreme Court in **Raju Jethmalani & Others v. State of Maharashtra & others** [(2005) 11 SCC 222], Mr.Hariharan further submitted that the petitioner is prepared to give an affidavit, undertaking that in the event of the Municipality being able to facilitate promulgation by a notification under Section 4(1) of the Land Acquisition Act within one year , the petitioner will not demand any compensation for the constructions made by him. The above submission is also appealing. Hence I permit the petitioner to approach the Government and direct the Government to consider the petitioner's request with as much sympathy as possible, taking into account the principles laid down in **Raju Jethmalani**'s case(supra). The Government will take decision only after issuing notice to the petitioner and after hearing him.

PIUS C. KURIAKOSE, JUDGE

btt